Adoption — Succession — Parent and Child.—American law follows the common law of England so closely, and is so generally interpreted in the light of its history, that a case which involves principles foreign to the parent system is, ipso facto, of interest to the legal student, if not also to the practical lawyer. A case of this type, arising under the law of adoption, and decisive of a principle not heretofore established in California, was recently decided by the Supreme Court.[1] The case involved a question of intestate succession. The intestate, while a minor, was adopted, with all the formalities necessary under the California law to make such adoption absolute,[2] by his maternal grandfather, from whom he later received a bequest of ten thousand dollars. Upon the intestate's death his natural father came in, and demanded a fourth of his estate, claiming to be entitled thereto under Section 1386, Subdivision 2, of the Civil Code of California.

The Supreme Court (Justice Shaw, with whom concurred Justice Lorigan, dissenting), denied the petition of the father, holding that he was "entitled to nothing, for the reason that he had, by virtue of the adoption proceedings ceased to sustain the legal relation of father to the decedent," his place being taken by the adopting parent. In reaching this conclusion the court placed no reliance on cases decided in foreign jurisdictions,[3] but worked the proposition out on the basis of principles gleaned from California cases bearing an analogy to the principal case. So far as the consideration of the court goes, it is logical and clear. In view of the fact that it had already been held in this State that a divorce court was ousted of its jurisdiction to reopen the question of the custody of a child by its adoption by a third person while in the mother's custody;[4] that the residence of an adopted child was the residence of the adopting parent;[5] that an adopted child was a "child" within the meaning of Section 1365 of the Code of Civil Procedure, and entitled, therefore, to letters of administration;[6] that such child might inherit under the California succession statute from an adopting parent who died intestate;[7] and that the adopted children of the daughter of a testator were his lineal descendants, and so exempted from the burden of a collateral inheritance

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[1] Estate of Jobson, (Dec. 10, 1912), 44 Cal. Dec. 655, 128 Pac. 938.

[2] Civil Code of California, Secs. 221 to 228, inclusive.

[3] Estate of Jobson, supra, "The statutes of other States differ materially from ours, and the cases on the subject therefore afford no great aid to us." But see Barnhizel v. Ferrell (1874), 47 Ind. 335; Davis v. Krug (1883), 95 Ind. 1; Humphries v. Davis (1884), 100 Ind. 274; also Reinders v. Koppelmann (1878), 68 Mo. 482, and note in 17 L. R. A. 435.

[4] Younger v. Younger (1895), 106 Cal. 377, 39 Pac. 779.

[5] Estate of Taylor (1900), 131 Cal. 180, 63 Pac. 345; and see Washburn v. White (1886), 140 Mass. 568, 5 N. E. 813.

[6] Estate of McKeag (1903), 141 Cal. 403, 412, 74 Pac. 1039; Estate of Camp (1901), 131 Cal. 469, 63 Pac. 736.

[7] Estate of Evans (1895), 106 Cal. 562, 39 Pac. 860; Estate of Williams (1894), 102 Cal. 70, 36 Pac. 407; Estate of Jessup (1889), 81 Cal. 408, 422, 22 Pac. 742; Estate of Newman (1888), 75 Cal. 213, 16 Pac. 887.

tax,[8] it seems not unreasonable to declare that adoption deprives a natural parent of the right of intestate succession to his child's estate. The dissenting opinion rendered by Justice Shaw offers no substantial arguments in support of a contrary holding. Two contentions are therein made: first, that the "relation (growing out of adoption), cannot last longer than the lives of the two parties to it," and second, that "so far as unjust or inequitable consequences may properly affect the question" they oppose the doctrine established by the prevailing opinion. Neither the learned Justice, nor the briefs of the counsel for the natural father, cite cases supporting the first proposition, and the writer has found none, while there is at least a very decided implication to the contrary in the cases which support the view taken by the majority of the court.[9] To the second proposition it may be answered that equity plays no part in the determination of the succession to estates, that being purely a matter of statutory regulation, which cannot be changed by the court.[10] And the same observation may be made regarding the rights and obligations arising from adoption.[11]

The prevailing opinion in the principal case, on the other hand, may be given additional support by evidence that the legislative intent in enacting the sections of the Civil Code relating to the subject of adoption was to allow an adopting parent, rather than the natural parent, to succeed to the estate of an adopted child who should die intestate. The earliest California statute covering the subject of adoption,[12] contained an express provision to the effect that "if the adopted child leaves descendants, ascendants, brothers or sisters, the party adopting, nor his relatives, shall not inherit the estate of the adopted child, nor any part thereof; nor shall it be lawful for the adopted child . . . . to make any testamentary disposition in favor of said party adopting, or his relatives." [13] Except for this provision, which was excluded when the codes were enacted, the paragraph which embodied it was in all material respects identical with the present Section 228 of the Civil Code. The natural inference to be drawn is that the Legislature left out the matter omitted with the intention of removing the previously existing disability of the adopting parent, and of placing it on the natural relatives of the adopted child, for it is obvious that the capacity to succeed could not exist concurrently in these two, in a sense, adverse parties.

Regarded in the light of such beacons as there are to illumine the

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[8] Estate of Winchester (1903), 140 Cal. 468, 74 Pac. 10.

[9] Cited in notes 4, 5, 6, 7 and 8.

[10] McCaughey v. Lyall (1908), 152 Cal. 615, 617, 93 Pac. 681; In re Ingram (1889), 78 Cal. 586, 588, 21 Pac. 435.

[11] Estate of Johnson (1893), 98 Cal. 531, 536, 33 Pac. 460; Ex parte Clarke (1891), 87 Cal. 638, 641, 25 Pac. 967; Ex parte Chambers (1889), 80 Cal. 216, 219, 22 Pac. 138.

[12] Statutes of 1869-1870, page 530.

[13] Id. § 6.

way, we may conclude that the case of the Estate of Jobson[14] was rightly decided. But in bringing this comment to a close we would submit that the way is deplorably dark. Though favoring the conclusion reached by the court, we cannot feel sure that the general doctrine which the case supports, namely, that the rights arising from the relation created by adoption extend even to a right of intestate succession in the survivor of the parties to the adoption, to the estate of the other, is altogether consistent with the language of our succession statute.[15] For example, can an adopted child be properly said to be the "issue" of the adopting parent? Certainly so to maintain necessitates an unusual perversion of the term.[16] And this is but one of numerous kindred doubts which must present themselves on closer study. Further, our statutory provisions respecting the matter of adoption lack to an extreme extent that degree of completeness and explicitness which should be theirs, especially in view of the fact that in this instance the common law cannot be relied on to supply deficiencies in the substantive law of the codes. These faults become the more apparent upon an examination of the related provisions in the French and German civil codes,[17] which are admirably concise and complete, and which cover specifically almost all of the questions which may conceivably arise as to the effects of adoption upon the rights and duties of the parties concerned, among others the precise question presented in the Estate of Jobson.[18] From these considerations the desirability of a thorough revision of that portion of the Civil Code of California which covers the matter of adoption would seem unquestionable. J. U. C., Jr.

Bills and Notes: Rights of the Holder After the Drawer's Death.— Action by the holder of a check given for value against the bank and the administrator of the drawer's estate. Both demurred to the complaint and the court below sustained their demurrers. The District Court of Appeal reversed the judgment below and as the basis of its decision re-

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[14] (1912), 44 Cal. Dec. 655; 128 Pac. 938.

[15] Civil Code of California, § 1386.

[16] It has, however, been so interpreted in California [Estate of Newman (1888), 75 Cal. 213, 219; 16 Pac. 887.], but with a discussion so brief as to be quite unsatisfactory in removing the doubt which the use of the word raises. Would it not appear, rather, that neither of the words, "child," or "issue," is definitive of the other, but that both are used in the sense of "lawful issue?" The three terms are used interchangeably in our statute of succession (Civil Code, § 1386), and the expression "lawful issue" being by far the most specific and definite would naturally seem to be determinative of the legislative intent. And it would seem obvious that an adopted child cannot be "lawful issue," for that term denotes the fruit of a lawful marriage.

[17] French Civil Code, § 343 to § 360; German Civil Code, § 1741 to § 1772.

[18] French Civil Code, Secs. 351, 352; German Civil Code, Sec. 1759.